客户资产的剥离

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买方若只想要业务而不要托管簿，或卖方若希望在出售前结清托管簿，就必须剥离客户资产。在瑞士，剥离是指经客户同意，将每位客户的代币转移给承继托管机构或客户自己的钱包。之所以需要客户同意，是因为托管合同具有人身性质，且客户依据《瑞士债务执行与破产法》第242a条享有的分离取回权，附着于其与特定托管机构之间的特定安排。[1]实际操作是一个迁移过程：托管机构通知客户，提供承继机构，取得客户指示，转移代币，并在链上记录每一笔转移。问题在于不作回应的客户。瑞士法律允许托管机构在找不到债权人时将资产提存于法院，或将其出售后提存价款，但这些程序是为有形物品制定的，适用于代币的效果尚未经过检验。[2]

在新加坡，持牌DPT托管机构的客户资产，依据2024年的资产保障规则以信托方式存放于分离的钱包中。因此，剥离是将信托财产转移给承继受托人或受益人。这需要客户的指示，或托管协议中允许委任承继人的条款。[3]新加坡金融管理局期望停止某项服务的持牌人向客户发出合理通知，有序返还资产，并就整个过程提交报告。对于2024年和2025年退出新加坡市场的持牌人，MAS要求其在停业前提交业务结束计划。[4]

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示例

一家新加坡MPI持牌人为4万名客户提供交易和托管服务，同意被一家瑞士银行集团收购。该集团想要的是交易技术和新加坡团队，而不要零售托管簿。双方将交易分三步进行。第一步，持牌人通知客户托管服务将在九十天后终止，根据一份批量转移协议，提供迁移至一家指定的新加坡持牌托管机构的方案，并请客户作出指示。不作回应的客户将按默认方式迁移，依据是现有协议中允许委任承继受托人的条款。第二步，迁移完成后，持牌人将剩余余额核对至零，取得审计师的确认，并通知MAS托管服务已终止。第三步，瑞士集团向MAS申请批准其成为20%控制人，此时牌照仅涵盖交易服务；获批后完成股份收购。整个时间表为九个月。另一种方案是连同托管簿一并收购公司，那么瑞士集团就必须按照MAS的规则在新加坡维持一项它根本无意经营的零售托管业务。

注释

1. DEBA，SR 281.1，第242a条（债务人为客户持有的加密资产的分离，前提是单独分配，或集体持有且易于归属）；CO，SR 220，第475条（应要求返还寄存物）。第D部分第IV章。↩
2. CO，SR 220，第92条及第93条（债权人迟延受领或下落不明时，将标的物提存于法院或予以出售）。第D部分第V章。↩
3. Payment Services Act 2019，第23A条及Payment Services (Safeguarding of Customers' Assets) Regulations（客户的数字支付代币以信托方式持有；分离；对账）；MAS，Guidelines on Safeguarding of Customers' Assets。第K部分第II章。↩
4. MAS，Guidelines on Licensing for Payment Service Providers（PS-G01），关于停止营业的部分；MAS Notice PSN01，关于停业通知的段落。第K部分第II章及第X章。↩

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